

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MERCED

Civil Law and Motion Tentative Rulings  
Hon. Donald Proietti  
Courtroom 8

627 W. 21<sup>st</sup> Street, Merced

September 4, 2015  
8:15 a.m.

The following tentative rulings shall become the ruling of the court unless a party gives notice of intention to appear as follows:

1. You must call (209) 725-4240 to notify the court of your intent to appear.
2. You must give notice to all other parties before 4:00 p.m. of your intent to appear.

Per California Rules of Court, rule 3.1308(a)(1), failure to do both items 1 and 2 will result in no oral argument. *Note:* Notifying CourtCall of your intent to appear does not satisfy the requirement of notifying the court.

Case No.	Title / Description
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CVM018227	Jamie Foltz vs. Integon National Insurance Co.
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Motion for Summary Adjudication

**Defendant Integon National Insurance Company's evidentiary objection to plaintiff Jamie Foltz's response to Special Interrogatory No. 1 is SUSTAINED. The Court is unaware of any legal authority supporting the admissibility of a responding party's own interrogatories responses in opposition to a motion for summary adjudication. (See Code Civ. Proc., § 2030.410.)**

**Defendant's motion for summary adjudication of Issue No. 1 as to the second cause of action for breach of the implied covenant of good faith and fair dealing based on the genuine dispute rule is DENIED. A motion for summary adjudication must completely dispose of a cause of action. (Code Civ. Proc., § 437c, subd. (f)(1).) A defendant has met his or her burden of showing that a cause of action has no merit if the defendant has shown that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).) In this case, paragraphs 28 and 29(a) of the complaint allege, *inter alia*, that Integon failed to properly investigate plaintiff's claim. (See CACI No. 2332.) "[A]n insurer may breach the covenant of good faith and fair dealing when it fails to properly investigate its insured's claim." (*Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 817.) "The genuine dispute rule does not relieve an insurer from its obligation to**

thoroughly and fairly investigate, process and evaluate the insured's claim." (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 724.) "[A]n insurer is not entitled to judgment as a matter of law where, viewing the facts in the light most favorable to the plaintiff, a jury could conclude that the insurer acted unreasonably." (*Ibid.*)

In this case, the undisputed material facts proffered by defendant, viewed in the light most favorable to plaintiff, do not negate plaintiff's allegations of failure to properly investigate plaintiff's claim. For example, the coverage denial letter dated April 4, 2014 does not indicate that defendant performed a full, fair and thorough investigation of the evidence given by plaintiff to claims representatives of alleged damage to the driver's door jamb and weather stripping that might show forced entry into the vehicle. Further, the undisputed material facts do not indicate that the field claims representative conducted a full, fair and thorough investigation.

Defendant's motion for summary adjudication of Issue No. 2 as to the claim for punitive damages is DENIED on the ground that defendant has not met its initial burden of showing that plaintiff lacks evidence or cannot obtain evidence to support her claim for punitive damages based on alleged malicious, oppressive, or fraudulent conduct of defendant. In particular plaintiff's amended interrogatory response offered by defendant does not establish that plaintiff is unable to prove the elements for a claim of punitive damages by clear and convincing evidence.

The prevailing party is directed to prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, rule 3.1312, and to provide notice thereof to the opposing party/counsel as required by law and the California Rules of Court. The order is to be submitted directly to Hon. Donald J. Proietti, Courtroom 8.

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15CV-02114 In Re: R. McVay

Court Ruling

**Appearance required.**

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